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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,332	03/12/2004	Brandon Gerard Sudholt	SUDHOLT-1	6229

7590

07/05/2006

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EXAMINER

MAGUIRE, LINDSAY M

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/799,332	Applicant(s) SUDHOLT ET AL.	
	Examiner Lindsay M. Maguire	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

This Final Office Action is in response to the application filed on March 12, 2004 and the amendment filed on June 9, 2006.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 10, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation, "said display area is configured to receive two blister packages therein" in lines 11-12 of claim 1 and in lines 9-10 of claim 10, and the recitation "a display area defined between the opposed channels such that opposite sides of each blister package are received within the channels" in lines 13-15 of claim 20, render the claims indefinite. In particular, a blister package is not an element of the claimed device and it is improper to seek to define claimed structure based on a comparison to some unclaimed element. In this case, the boundaries of the claim cannot be properly ascertained because one would not know whether their device infringed the claims until someone else later added a blister package. In other words, a device as defined in the claims would infringe the claims with one particular package with the exact same device would not infringe the claims when another blister package is used. Accordingly, the

features of the device, itself, must be defined instead of relying upon a comparison with an ascertained element.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 10-18, and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. Ruiz 6,631,812.

Ruiz discloses a rack, capable of displaying at least one blister package, comprising: a first elongated rail (16) comprising a first end (34), a second end (38), and a channel (26) extending there between; a second elongated rail (18) comprising a first end (36), a second end (40), and a channel (28) extending there between; and a siderail support member (14) substantially perpendicularly between said first and second elongated rail first ends such that said first elongated rail channel substantially mirrors said second elongated rail channel such that a display area is defined between said first and second elongated rail channels (Figure 1), said first elongated rail spaced a distance from said second elongated rails such that said display area is capable of receiving two blister packages (the device of Ruiz is fully capable of performing the function as set forth in claim 1, see Figures 1, 3, and 6).

Regarding claims 2 and 3, Ruiz further discloses a mounting bracket (60) configured to be coupled to a support structure, at least one, of the first and second elongated rails is removably coupled to the mounting bracket, and are both suspended from the mounting bracket (Figure 1).

In regards to claim 4, insomuch as the claim is best understood (given the claim objection and 35 U.S.C. 112 rejection as advanced above), Ruiz discloses that the siderail support member (14) comprises a first end (20), a second end (22), and a channel extending there between, said siderail support member channel for coupling said first and second elongated rails to a mounting bracket (60).

Regarding claim 5, Ruiz discloses a device further comprising a bracket (60) configured to be coupled to a support structure, said mounting bracket comprising a first end (62), a second end (66), and a channel extending there between (Figure 1), said channel for coupling at least one of said first and second elongated rails to a support structure.

In regards to claim 6, Ruiz discloses that the first and second elongated rails each comprise a rear surface and a front surface; each being substantially planar between the first and second ends (Figure 1).

With respect to claim 8, Ruiz further discloses a support rail (22) extending substantially perpendicularly between said first and second elongated rail ends.

Regarding claim 10, Ruiz discloses a display rack assembly capable of displaying at least one blister package comprising at least one pair of opposed elongated rails (16, 18) coupled together by a first support rail (20) that extends between adjacent ends of said pair of elongated rails, and a second support rail (22) that extends between adjacent opposite ends of said elongated rails, each of said elongated rails comprises an outer and inner surface (Figure 1), and a channel (26, 28) extending there between, each of said channel extends from said first support rail at least partially towards said opposite ends of each respective said elongated rails, said pair of elongated rails are spaced apart such that a display area is defined between (the device of Ruiz is fully capable of performing the function as set forth in claim 10, see Figures 1, 3, and 6).

In regards to claim 11, Ruiz discloses a display rack assembly comprising a mounting means (30A, 30B, 30C) for securing said rack assembly to a support structure.

With respect to claim 12, Ruiz discloses a mounting apparatus (60) for securing the rack assembly to a support structure, at least a portion of said mounting apparatus having a hook-shaped cross-sectional profile (see Figure 1).

Regarding claim 13, Ruiz discloses a mounting apparatus (60), comprising a first end (62), a second end (66) and a channel extending at least partially there between (Figure 1).

In regards to claim 14, Ruiz discloses a rack assembly further comprising a mounting apparatus for securing said rack assembly to a support structure, said pair of elongated rails configured to be removably coupled to the support structure (Figure 1).

Regarding claims 15 and 16, Ruiz discloses a rack assembly comprising a mounting apparatus (60) for securing said rack assembly to a support structure, at least one or both elongated rails are configured to be suspended from said mounting apparatus (column 4, lines 34-35).

With respect to claim 17, Ruiz further discloses that at least one of the first and second support rails comprise a channel (26, 28) extending axially there through between a first end and a second end of said respective support members (Figure 1).

In regards to claim 18, Ruiz discloses that at least one of the first and second support rails (20, 22) extends substantially perpendicularly between said pair of elongated rails (16, 18).

Regarding claim 20, Ruiz discloses a method capable of displaying a blister packages within a display rack comprising, coupling a first elongated rail (16) to a support member (14), wherein the first elongated rail includes a first end (34), a second end (36), and a channel (26) extending from the first end at least partially towards the second end; positioning a second elongated rail (18) adjacent the support member, wherein the second elongated rail includes a first end (36) and a second end (40), and a channel (28) extending from the first end at least partially towards the second end; coupling the second elongated rail to the support rail such that the channel defined within the second elongated rail substantially mirrors that of the first elongated rail (Figure 1); coupling the assembly to a support structure (column 4, lines 17-41); and is able to slidably couple two blister packages into a display area (the device of Ruiz is fully capable of performing the function as set forth in claim 20, see Figures 1, 3, and 6).

In regards to claim 21, Ruiz further discloses that coupling the assembly to a support structure further comprises suspending the assembly from the support structure (column 4, lines 17-21).

With respect to claim 22, insomuch as the claim is best understood (given the claim objection as advanced above), Ruiz discloses that suspending the assembly from the support structure further comprises removably coupling at least one of the support structure, the first elongated rail, and the second elongated rail to a mounting bracket (60, column 4, lines 34-41).



Regarding claim 23, Ruiz further discloses that coupling the second elongated support rail to the support rail comprises coupling the second elongated rail to the support tail such that the support tail extends substantially parallel between the first and second elongated rails (Figure 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruiz U.S. Pat. No. 6,631,812 as applied to claims 1 and 10 as advanced above, alone.

Ruiz discloses a display rack and a display rack assembly substantially as claimed, as advanced above.

The claims differ from requiring that the first and second elongated rails are each fabricated from a metallic material. However, Ruiz does disclose, "any suitable size, shape, or type of elements or materials could be used" (column 3, lines 30-31). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device of Ruiz from a metallic material for such basic reasons as manufacturability, durability, aesthetics, cost, etc.

***Response to Arguments***

Applicant's arguments filed June 9, 2006 have been fully considered but they are not persuasive.

Applicant's argument that "Ruiz does not describe nor suggest a display rack for displaying at least one blister package" is acknowledged. However, It is noted that although Ruiz '812 shows "Stemware Suspenders", Ruiz '812 is considered to be able to function as an "Apparatus for Displaying Blister Packages" as called for in the instant claims. Further, the recitations "for displaying at least one blister package" in line 1 of claims 1 and 10, are functional recitations. While Ruiz '812 does not explicitly show the apparatus in these configurations, a reference needs only be capable of being in these configurations in order to "read on" the claim language.

Additionally, Applicant's argument that "the Section 103 rejection of the presently pending claims is not a proper rejection" (page 10, paragraph 6) is acknowledged. However, the Section 103 rejection as advanced above and in the previous office action stands as a proper Section 103 rejection. It is not considered improper to have a Section 103 reference where only one reference is used, particularly when the aforementioned reference (Ruiz '812) discloses that "any suitable size, shape, or type of elements or materials could be used" (column 3, lines 30-31). Ruiz '812 discloses the motivation to make the device out of "any suitable material" and it is the Examiner's

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contention that "a metallic material" would have been obvious to use since it is taken from the category of "any suitable material".

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsay M. Maguire whose telephone number is 571-272-6039. The examiner can normally be reached on M-F: 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lindsay M. Maguire  
6/26/06

  
SARAH F. DORE  
PRIMARY EXAMINER